

Rebecca S. Glos, Esq. (SBN 210396)
rglos@watttieder.com
Kyle S. Case, Esq. (SBN 323653)
kcase@watttieder.com
Watt, Tieder, Hoffar & Fitzgerald, L.L.P.
4 Park Plaza, Suite 1000
Irvine, CA 92614
Telephone: 949-852-6700
Facsimile: 949-688-2139

Attorneys for Plaintiff
TRAVELERS CASUALTY AND SURETY
COMPANY OF AMERICA

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

TRAVELERS CASUALTY AND
SURETY COMPANY OF AMERICA,
a Connecticut corporation,

Plaintiff,

v.

JOKAKE CONSTRUCTION
SERVICES, INC., an Arizona
corporation; and DOES 1 through 100

Defendants.

Case No. 2:23-cv-06301-HDV-AGR

**TRAVELERS CASUALTY AND
SURETY COMPANY OF
AMERICA’S NOTICE OF
APPLICATION AND HEARING
FOR RIGHT TO ATTACH ORDER
AND ORDER FOR ISSUANCE OF
WRIT OF ATTACHMENT**

*(Filed Concurrently Herewith:
Memorandum of Points and Authorities;
Application for Right to Attach Order;
Declaration of Marc Brown; and
Declaration of Steven Padula)*

Hearing

Date: 12/14/2023
Time: 10:00 a.m.
Crtrm: 5B

Complaint Filed: August 3, 2023

TO DEFENDANT JOKAKE CONSTRUCTION SERVICES, INC. AND
ITS ATTORNEYS OF RECORD:

YOU ARE HEREBY GIVEN NOTICE that Plaintiff TRAVELERS
CASUALTY AND SURETY COMPANY OF AMERICA (“Travelers” or

1 “Plaintiff”) has filed with the Court an Application for a Right to Attach Order
2 (“RTAO”) and Writ of Attachment (“WA”).

3 A hearing on Plaintiff’s Application will be held in this Court on December
4 14, 2023, at 10:00 a.m., in Courtroom 5B.

5 Plaintiff’s request for an Order is based upon the Memorandum of Points and
6 Authorities in Support of Travelers’ Application for RTAO and Order for Issuance
7 of WA, and Declarations of Marc Brown and Steven Padula filed and served with
8 this Notice.

9 Your attention is directed to the following sections of the California Code of
10 Civil Procedure that sets forth when attachment may or may not be issued, the
11 manner of calculating the amount to be secured by the attachment, the Court’s
12 discretion to include costs and attorney’s fees, and special limitations on the
13 amount to be secured by attachment in unlawful detainer proceedings: Code Civ.
14 Proc. Sections 482.110, 483.010, 483.015, 483.020.

15 You are notified that:

16 1. A right to attach order will be issued if the Court finds at the hearing
17 that Plaintiff’s claim is probably valid and the other requirements for issuing the
18 order are established. This hearing may include both written and oral presentations,
19 but is not for the purpose of determining whether the claim is actually valid.
20 Determination of the actual validity of the claim will be made in subsequent
21 proceedings in the action and will not be affected by the decision at the hearing on
22 the application for the order.

23 2. If you desire to oppose the issuance of a right to attach order or object
24 to the amount to be secured by the attachment as provided in Code of Civil
25 Procedure Section 483.015 (or Code of Civil Procedure Section 483.020 in
26 unlawful detainer actions), you must file with this Court and serve on Plaintiff (no
27 later than five (5) court days prior to the date set for hearing above or at such other
28

1 time as set by the Court) notice of opposition and supporting declaration or
2 affidavit as required by Code of Civil Procedure Section 484.060.

3 3. If a RTAO is or has been issued, a WA will be issued to attach your
4 property described in Travelers' Application unless the Court determines that the
5 property is exempt from attachment or that its value clearly exceeds the amount
6 necessary to satisfy the amount to be secured by the attachment. However, since the
7 RTAO will not necessarily be limited to your property described in Travelers'
8 Application, a WA may later be issued to attach other nonexempt property of yours.

9 4. If you claim that all or some portion of the property described in
10 Travelers' Application is exempt from attachment, you must, no later than five (5)
11 court days prior to this hearing: (a) include your claim of exemption in your notice
12 of opposition filed and served pursuant to Code of Civil Procedure Section 484.060
13 or file and serve a separate claim of exemption with respect to the property as
14 provided in Civil Procedure Section 484.070; and (b) file with the Court and serve
15 on Plaintiff a claim of exemption with respect to the property as provided in Code
16 of Civil Procedure Section 484.350.

17 5. If you fail to make a claim of exemption with respect to personal
18 property, or make a claim of exemption with respect to real or personal property,
19 but fail to prove that the property is exempt, any further claim of exemption with
20 respect to the property will be barred unless you show a change in circumstances
21 occurring after expiration of the time for claiming exemptions.

22 6. Claims of exemption resulting from a change of circumstances,
23 whether after denial of a previous claim or expiration of the time for claiming
24 exemptions, may be asserted as provided in Code of Civil Procedure Section
25 482.100.

26 7. You may obtain a determination at the hearing whether property not
27 described in the Application is exempt from attachment. Your failure to claim that
28 property not described in the application is exempt from attachment will not

1 preclude you from making a claim of exemption with respect to the property at a
2 later time.

3 8. You may also obtain a determination at the hearing whether the
4 amount sought to be secured by the attachment will be reduced by: (a) the amount
5 of any money judgment in your favor against Plaintiff that remains unsatisfied and
6 enforceable; (b) the amount of any indebtedness of the Plaintiff that you have
7 claimed in a cross-complaint filed in the action if your claim is one upon which an
8 attachment could be issued; (c) the amount of any claim asserted by you as a
9 defense in the answer pursuant to Code of Civil Procedure Section 431.70 if the
10 claim is one upon which an attachment could have been issued had an action been
11 brought on the claim when it was not barred by the statute of limitations; or (d) the
12 value of any security interest in your property held by Plaintiff to secure the
13 indebtedness claimed by Plaintiff, together with the amount by which the value of
14 the security interest has decreased due to the act of the Plaintiff or a prior holder of
15 the security interest.

16 9. The amount to be secured by an attachment is determined pursuant to
17 the following statutes:

18 (a) **Code of Civil Procedure Section 482.110.** A WA may include
19 **an estimate of the costs and allowable attorney fees.**

20 (b) **Code of Civil Procedure Section 483.010.** An attachment may
21 issue on a claim for \$500 or more based on a contract, express or
22 implied, exclusive of attorney fees, costs, and interests. If the claim
23 was originally secured by an interest in real property (*e.g.*, a mortgage
24 or trust deed), an attachment may issue only if the security has become
25 valueless or has decreased in value to less than the amount owing on
26 the claim, through no fault of Plaintiffs or the security holder (if
27 different from Plaintiffs).

1 (c) **Code of Civil Procedure Section 483.015.** The amount to be
2 attached includes the amount of the indebtedness claimed by Plaintiff,
3 plus estimated costs and allowable attorney fees, reduced by the sum
4 of the following:

5 (i) the amount of any unsatisfied money judgment held by
6 Defendants against Plaintiff;

7 (ii) the amount of any indebtedness of Plaintiff claimed by
8 Defendants in a cross complaint filed in the action (if a WA
9 could issue on the claim);

10 (iii) the amount of any cross-demand for money owed by
11 Plaintiff to Defendants that is barred by the statute of limitations
12 (but assertable as a Code of Civil Procedure Section 431.70
13 defense) if the debt was on upon which a WA could have been
14 issued before the statute of limitations ran; and

15 (iv) the amount of any security interest held by Plaintiff in
16 Defendants' property, together with any decrease in the value of
17 the underlying security caused by Plaintiffs or a prior security
18 holder.

19 (d) **Code of Civil Procedure Section 483.020.** An attachment
20 ordered in an unlawful detainer proceeding may include:

21 (i) the amount of rent past due when the complaint is filed;

22 (ii) an additional amount for the estimated rent due from the
23 date the complaint was filed until the estimated date of judgment
24 or delivery of possession to Plaintiff; plus

25 (iii) estimated costs and attorney fees.

26 Any prepaid rent or lease deposits held by Plaintiffs are
27 disregarded in the calculation of the amount of attachment.

28 However, the amount of attachment will be reduced by the

1 amounts described in Code of Civil Procedure Section 483.015
2 (see above).

3 9. Either you or your attorney or both of you may be present at the
4 hearing.

5 10. YOU MAY SEEK THE ADVICE OF AN ATTORNEY ON ANY
6 MATTER CONNECTED WITH PLAINTIFF'S APPLICATION. THE
7 ATTORNEY SHOULD BE CONSULTED PROMPTLY SO THAT THE
8 ATTORNEY MAY ASSIST YOU BEFORE THE TIMES FOR FILING YOUR
9 OPPOSITION AND CLAIMS OF EXEMPTION AND AT THE HEARING.

10 This Application is made following the conference of counsel pursuant to
11 L.R. 7-3 which took place on Wednesday, September 13, 2023 via telephone and
12 confirmed by email.

13
14 Dated: September 28, 2023

Watt, Tieder, Hoffar & Fitzgerald, L.L.P.

15
16 By /s/ Rebecca S. Glos

17 Rebecca S. Glos

18 Kyle S. Case

19 Attorneys for Plaintiff

Travelers Casualty and Surety

Company of America

20 13240530.2 103124.00070
21
22
23
24
25
26
27
28